85-1644

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ROY P. BRIEHLER,

Appellant.

v.

POSEIDON VENTURE, INC., a Rhode Island corporation, WILLIAM BURGIN, SYLVIA'S, INC., a Rhode Island corporation, and JERRY L. McINTYRE,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF RHODE ISLAND

JURISDICTIONAL STATEMENT

Roy P. Briehler,
Appellant - ProSe
1740 North Olden Avenue
Trenton, New Jersey 08638

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether Rhode Island General Laws 9-26-12 and 9-26-13, which permit levy and sale on execution and confiscation of property with no actual prior notice to the judgment debtor or to the property owner and without requiring that the judgment debtor and the property owner be given the opportunity to satisfy the Execution, and which permit levy, sale, and confiscation of property belonging to third parties with no notice and no opportunity to satisfy the Execution being given to the third parties, violate the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Whether Rhode Island General Laws 9-26-2; 9-26-4; 9-26-9; 9-26-11; 9-26-12; 9-26-13;and 9-26-17, which permit in certain, but not all, circumstances the confiscation of property belonging to third parties; confiscation of property even though the judgment creditor is more than satisfied prior to the Execution "Sale"; confiscation of property with no "public

auction"; confiscation of property by a party who is not the highest bidder at the proceeding; sale, en masse, when much less property would more than satisfy the Execution; confiscation of property with no prior separation or exposure of goods; confiscation of property with no regard for ownership of the said property; confiscation of property on which there is a recorded UCC lien and mortgage with no notice or compensation to the mortgageholder; confiscation of clothing, books, and tools; confiscation of property with no evidence of any monies being paid for said property; confiscation of property with a fair market value in excess of $2,000,000.00 for an alleged $356.34, violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

LIST OF PARTIES TO PROCEEDINGS BELOW

The plaintiffs-appellants in the proceedings below were Roy P. Briehler, Briehler Properties, Inc., and Roy Briehler's of New Jersey, Inc.

The caption of the case in this

Court contains the names of all defendants-appellees .

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OPINIONS BELOW

The opinions of the Rhode Island Supreme Court and the Rhode Island Superior Court, Providence County, are not reported. (A-1 through A-10 and A-11 through A-31 respectively)

JURISDICTION

The opinion of the Rhode Island Supreme Court, affirming the Decree of the Rhode Island Superior Court that there is no requirement in Rhode Island Law to actually "notify the judgment debtor by mail or otherwise" prior to the confiscation of his property, and which deems blatant, well-documented violations of Rhode Island levy and execution statutes as "no violations of law" was entered on January 7, 1986.

A notice of appeal to this Court was filed on January 13, 1986. (A-32-

A-33).

The Court has jurisdiction of this appeal by virtue of 28 USC 1257(2). Appeal jurisdiction is open to appellant as an unconstitutional and invalid result has been caused by application of the Rhode Island levy and execution statutes.

28 U.S.C. 2403(b) may be applicable and pleadings shall be served upon the Attorney General for the State of Rhode Island.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides that:

> "No person shall be. . . deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without

just compensation."

The Seventh Amendment to the Constitution of the United States provides:

> "In suits at common law, where the value in controversey shall exceed twenty dollars, the right of trial by jury shall be preserved,. . ."

The Fourteenth Amendment to the Constitution of the United States, Section 1, provides, in relevant part:

> ". . .Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rhode Island General Law 9-26-2 provides:

> "Every officer to whom a writ of execution or other judicial writ shall be lawfully issued shall execute the mandates therein contained as commanded, and shall make returns of his doings thereon. If he be unable to execute such mandates, he shall set forth the reason of his failure in his return."

Rhode Island General Law 9-26-4

provides in relevant part:

> "The following goods and property shall be exempt from attachment on any warrant of distress or on any other writ, original, mesne, or judicial:
>
> (1)The necessary wearing apparel of a debtor or of his family, if he has a family.
>
> (2)The working tools of a debtor necessary in his usual occupation, not exceeding in value the sum of five hundred dollars ($500), and the professional library of any professional man in actual practice. . ."

Rhode Island General Law 9-26-9

provides:

> "The proceeds of the sale shall be applied to the payment of the amount due on the mortgage, with such deduction for interest for the anticipated payment, or allowance for damages for such anticipated payment, as may be ascertained and allowed by the court to which the execution is returnable, and the balance shall be applied to the payment of the amount due on the execution."

Rhode Island General Law 9-26-11

provides:

> "If the mortgage be not redeemed by the plaintiff or sold as before mentioned, before the time of redemption expires, the attachment shall become void."

Rhode Island General Law 9-26-12

provides:

> "In all cases when execution shall be levied on any goods or chattels, such goods and chattels shall be kept in the possession of the officer and shall be advertised at least ten (10) days before they shall be exposed and offered for sale, in order that the person who owned such goods or chattels may, if he think fit, pay the money due,
>
> together with the costs which shall have accrued thereon, and thereupon have his said goods or chattels restored to him again; Provided, That if such goods and chattels shall be of a quickly perishable nature, the officer levying execution thereon shall immediately notify the defendant or his agent issuing the execution, to sell said goods and chattels at such time and in such manner as said court or justice may prescribe, and such order may be obtained at any time."

Rhode Island General Law 9-26-13

provides:

> "In case such owner shall not redeem them as aforesaid, and in case they be not sold under special order, the officer shall sell the same at public auction to the highest bidder, and in any case if any overplus shall remain after the debt or damages and costs and charges are paid, the same shall be delivered by the officer or to any person legally qualified on his behalf to receive the same."

Rhode Island General Law 9-26-17 provides:

> "The officer may, for good cause, from time to time adjourn the sale of said real estate or of any interest therein levied on, giving one (1) week's notice thereof by publication in some public newspaper in the manner above provided."

STATEMENT OF THE CASE

The instant case involves the question whether the Rhode Island levy and execution statutory scheme is unconstitutional as it permits the arbitrary confiscation of property with no due process of law to the judgment debtor and to the owners of the property

that is to be confiscated, and as blatant violations of the Rhode Island levy and execution statutes are arbitrarily and discriminately permitted and sanctioned by the State of Rhode Island.

STATEMENT OF FACTS

On September 3, 1971, Roy Briehler's of New Jersey, Inc., a New Jersey corporation in good standing continuously ever since 1961, purchased the United States documented 185', 700-ton, all steel ferry boat "THE NARROWS", which was located at Governor's Island, New York, from the United States Government, Defense Surplus Sales Office in Newport, Rhode Island. Said purchase is on record in the Defense Surplus Sales Office in Middletown, Rhode Island, in United States District Court, Rhode Island, C.A. No. 80-211, Rhode Island Public Utilities Commission, the Town of Jamestown, Rhode Island, and various

State of Rhode Island departments and agencies, including the Office of Secretary of State, Uniform Commercial Code Division. The recorded title to "THE NARROWS" has remained in Roy Briehler's of New Jersey, Inc. ever since its purchase in 1971.

On Novebmer 8, 1971, appellant Roy P. Briehler entered into a 25-year lease agreement with the Town of Jamestown and the State of Rhode Island. Said lease was drafted by the Town of Jamestown and was accepted by the State of Rhode Island. Thereafter, "THE NARROWS" was towed to the waters adjacent to Jamestown, Rhode Island and has remained afloat in the waters of the Atlantic Ocean ever since.

In April of 1972, Briehler formed Inn Island, Inc., a Rhode Island corporatio The Town of Jamestown created a new BT Alcoholic Beverage License, issued same to Inn Island, Inc. at East Ferry Wharf in Jamestown, R.I., and approved renewal

of that liquor license every year thereafter through November of 1983.

Over the next twelve years, appellant, a New Jersey citizen, founder, incorporator, director, and owner of 26% of the outstanding shares of stock of the Ewing Bank and Trust Company of Trenton, New Jersey, ice cream manufacturer in Trenton, New Jersey, commercial pilot, United States Coast Guard licensed Captain, operator of Flying Cloud Charter Cruises, and President of Roy Briehler's of New Jersey, Inc., Briehler Properties, Inc., Celestial Properties, Inc., and World's Best Ice Cream, Inc., spent hundreds of thousands of dollars for the conversion of "THE NARROWS" into, and for the operation of, a fully-equipped restaurant, a fully-equipped cocktail lounge, a fully-equipped floating hotel with forty staterooms aboard, all with full tile baths, and a fire alarm system

throughout the restaurant and hotel portion of the vessel, and for the development of East Ferry in Jamestown. Funds for development were supplied by appellant, by Roy Briehler's of New Jersey, Inc., Briehler Properties, Inc., a New JErsey corporation in good standing ever since 1961, and by Katherine A. Worthington, the mortgageholder and lienholder on "THE NARROWS". Ms. Worthington has had a mortgage on "THE NARROWS" since 1972.

Appellant sought no credit in Rhode Island, paid bills with cash.

On August 16, 1979, a lease agreement for the ferry boat "THE NARROWS", minus the property aboard, of $20,000.00 rental per month was negotiated between Roy Briehler's of New JErsey, Inc. and N.S.F. Development Co. of Staten Island, N.Y., via Mr. Titcomb, an expert witness at the R.I. Superior Court trial. Roy Briehler's of New Jersey, Inc. took a

deposit of $10,000.00 but subsequently changed plans and returned the check. "THE NARROWS" remained for sale at $1,500,000.00.

In May of 1980, pursuant to an Order by Justice Boyle, U.S. District Court, Rhode Island, C.A. No. 80-211, Roy Briehler's of New Jersey, Inc. granted a security interest in the ferry boat "THE NARROWS" to Norton Shipyard and Marina, Inc. of East Greenwich, R.I. to effect the release of the schooner "FLYING CLOUD", another vessel owned by the said corporation. The shipyard was represented by attorney Hyman who was also the Jamestown Solicitor at that time. The mortgage was filed by appellant Briehler in U.S. District Court on May 19, 1980. On June 12, 1980, the security interest was filed by attorney Hyman with the Rhode Island Secretary of State, Uniform Commercial Code

Division. There has been a continuously perfected security interest in "THE NARROWS" from June 12, 1980 to this day.

In the summer of 1981, Briehler's personal automobile lost a 79¢ frost plug and cooling water in front of the garage of Appellee Sylvia's, Inc. in Jamestown, Rhode Island. Briehler's automobile was destroyed by Sylvia's. Sylvia's billed the "Jamestown Ferry Boat" over $700.00 for "repairs".

Sylvia's, through its PResident, Joseph Perry, retained attorney David F. Fox and created a gas account in the name of Inn Island, Inc., specifically for a contemplated lawsuit, even though Sylvia's had never heard of, nor done any business with, Inn Island, Inc.

On August 26, 1982, Sylvia's sued "Roy T. Briehler, alias John Doe d/b/a Jamestown Ferry Boat" and Inn Island,

Inc. in Newport County District Court, Second Division, C.A. No. 82-779, for an alleged gas account and for alleged automobile repairs in the combined total of $738.61. Briehler and Inn Island counterclaimed against Sylvia's for $10,000.00.

A trial was held on Thursday, Oct. 14, 1982, and a Judgment on Decision was entered for Sylvia's against Briehler and Inn Island in the amount of $602.61, plus interest and costs, and for Briehler and Inn Island on their Counterclaim. Briehler and Inn Island filed an appeal on Monday, Oct. 18, 1982. On Dec. 10, 1982, even though the Court House was closed and locked during the 48-hour period within which appeal could be filed, Briehler's appeal was dismissed as being untimely and remanded to District Court for issuance of Execution.

Briehler kept the Clerks of both

District and Superior Courts and attorney Fox advised of his New Jersey and Florida addresses, and all mail was forwarded thereto by the U.S. Post Office, during his three-month absence from Rhode Island.

Nonetheless, Briehler and Inn Island were given no notice of either the hearing or of the Dismissal.

Two Executions #82-779 were issued - one on October 18, 1982 (issued from a Default Judgment entered as an un-numbered docket entry allegedly two days prior to trial when no default existed), against Inn Island in the amount of $810.73, and one on January 12, 1983, against Briehler, in the amount of $718.25, for a combined total of $1,528.98. Briehler and Inn Island were given no notice that Executions had issued against them.

On February 26, 1983, without offset of Inn Island's and Briehler's Judgment on their Counterclaim, two

Constable Sales were allegedly held of Inn Island's and Briehler's right, title, and interest in and to a ferry boat "Narrows", (not the same vessel as "THE NARROWS"), with no notice whatsoever to either the judgment debtors or to the owners of the property confiscated as a result thereof.

The evidence proves that, on February 26, 1983, Roy Briehler's of N.J., Inc. - not Inn Island and not Briehler - was the recorded owner of the hotel-ship "THE NARROWS". The evidence proves that the majority of the property aboard "THE NARROWS" was owned by Roy Briehler's of New Jersey, Inc., Briehler Properties, Inc., and Katherine Worthington. The evidence proves that the stock of Roy Briehler's of N.J., Inc., Briehler Properties, Inc., as well as the hotel-ship "THE NARROWS", U.S. Documentation No. 250214, including all furnishings, improvements, equipment, fuel oil,

boilers, refrigeration, and machinery contained therein, which had been pledged and hypothecated to Ms. Worthington as far back as 1972.

The written evidence demonstrates that the judgment creditors, Attorney Fox and the Constable do not agree with the alleged "Purchaser",(attorney-Town Council President)McIntyre as to where the two alleged Constable "Sales" were held.

The testimony of all of the appellees establishes that prior to the so-called "Sale" of the Briehler interest, before any Appellees admit to going aboard, Sylvia's, the judgment creditor, arranged to pay Burgin and McIntyre (somehow knowing in advance that they would be declared to be "Purchasers" of the Briehler interest) $3,000.00 cash for 6,000 gallons of fuel oil aboard , having a fair market value of approximately $9,000.00, without ascertaining title.

The judgment creditor satisfied the alleged debt of $602.61 and profited by $8,307.29 prior to the alleged "Sale" of the Briehler interest.

All appellees, the Constable, and attorney Fox agree, and so testified, that the Inn Island "Sale" was held first, and that the President of Sylvia's was the first bidder at each "Sale", and that his two bids totalled $931.33. Documents and testimony indicate that appellee Burgin, the only other bidder at each "Sale", made two separate bids which totalled $931.34 - $575.00 on Inn Island's interest and $356.34 on Briehler's interest.

Obviously, there cannot be a 1¢ difference on two high bids.

The testimony by appellees and the evidence prove that if Sylvia's bid on the Inn Island interest had been $1.00

or $574.00, or anywhere in between, then his bid on Briehler's interest had to be higher than Burgin's bid of $356.34. ($931.33 - $1.00= $930.33; $931.33 - $574.00 = $357.33)

Nonetheless, the Constable Bill of Sale Affidavit states that the Briehler interest was "sold" to Burgin who could not, according to appellees' own testimony and evidence, have been the highest bidder.

The evidence demonstrates that there was no separation, exposure, or identification of property belonging to the judgment debtors.

The Rhode Island public records all showed ownership of "THE NARROWS" to be in Roy Briehler's of New Jersey, Inc. and the said records were readily accessible. The record is clear that neither the "Sellers" nor the "Buyers" ascertained title to "THE NARROWS" and

her contents.

The record establishes that Burgin formed a clandestine partnership with appellee-attorney McIntyre (President of the Town Council of Jamestown and senior partner in the Rhode Island law firm of Edwards & Angell) at least two months prior to the two Constable "Sales" in the ferry boat "venture".

After the "Sales", attorney McIntyre and Burgin immediately took possession of "THE NARROWS" and all of the property aboard, disregarding title thereto. The evidence proves that attorney McIntyre and Burgin took possession of property belonging to third parties - namely, Roy Briehler's of New Jersey, Inc., Briehler Properties, Inc., and Katherine A. Worthington. The record is clear that appellees confiscated all of the clothes, books, and tools belonging to Briehler and Ms. Worthington.

McIntyre and Burgin further caused Briehler's arrest when he attempted to retrieve the property belonging to the third parties, and the property exempt from attachment, and the hotel-ship "THE NARROWS" for its rightful owners.

The record is clear that there has been a continuously perfected recorded security interest on "THE NARROWS" since June, 1980. No proceeds from the two "sales" has been applied to the amount due on the mortgage; no interest has been paid; and no allowance for damages has been paid.

The clear weight of evidence substantiates that Rhode Island General Laws 9-26-2; 9-26-4; 9-26-9; 9-26-12; 9-26-13; and 9-26-17 were blatantly violated by the appellees.

The Constable testified that he did not serve notice of the Sales, so-called, or of the Executions upon the

judgment debtors or upon the owners of the property that was confiscated.

Within 72 hours of the two "Sales", McIntyre and Burgin formed a new Rhode Island corporation, Poseidon Venture, Inc. and transferred title of "all that was acquired" at the two "Sales" to Poseidon.

Appellees are unable to produce either the cancelled check in the amount of $931.34, which Burgin allegedly wrote at the two "Sales", or a bank statement showing disbursement of that check.

Appellees have confiscated all of Appellant's, Inn Island's, Roy Briehler's of New Jersey, Inc., Briehler Properties, Inc.'s, and Katherine Worthington's property located in Jamestown, Rhode Island, with a value in excess of $2,500,000.00, and control of Briehler's lease valued at $200,000,000.00. Using Jamestown Police and Town Offices, Town Council President and Burgin's personal and

business attorney, who is also the Jamestown Solicitor, are denying Briehler all of his property, business, and leasehold rights, and his right to work in Jamestown, Rhode Island.

THE PROCEEDINGS BELOW

The above-entitled appeal evolves from Rhode Island Superior Court, Providence County, C.A. No. 83-0964, ROY P. BRIEHLER, BRIEHLER PROPERTIES, INC., ROY BRIEHLER'S OF NEW JERSEY, INC. vs. POSEIDON VENTURE INC., WILLIAM BURGIN, SYLVIA'S, INC., and JERRY L. McINTYRE, an injunctive action seeking to set aside two Constable Sales on the grounds of illegalities, irregularitie gross inadequacy of price, unfairness, collusion, and deceipt, and seeking to restore to the plaintiffs title to, and possession of, all of the property confiscated by the defendants under the color of Court-sanctioned process. Plaintiffs further sought compensatory

and punitive damages.

In March of 1984, the action came on for trial before J. Needham with a jury present. The jury sat for three weeks and was subsequently dismissed by J. Needham prior to adjudication.

On April 19, 1984, J. Needham ruled that Rhode Island levy and execution statutes have no requirement to actually "notify the judgment debtor by mail or otherwise". J. Needham ruled that the Briehler interest was "the ferry boat and its contents" - regardless of ownership of much of that said property by third parties. J. Needham ruled that there were "no violations of law", ignoring hundreds of pages of testimony and evidence to the contrary.

J. Needham dismissed the due process and ownership claims of the twenty-five year old plaintiff corporations on the grounds of estoppel

by conduct, ignoring thousands of pages of evidence on record proving that all transactions between the individual and the corporations were conducted with appropriate substantiating corporate resolutions, loan agreements, interest payments, supporting schedules, and proper income tax reports prepared with the utmost regard for formality. No evidence was presented to prove that the two adequately-capitalized corporations in continuous good-standing ever since 1961 had ever intermingled corporate and personal assets or funds.

Justice Needham refused to grant injunction. The plaintiffs filed Appeal No. 84-188 in the Rhode Island Supreme Court, which granted an injunction pending appeal.

Appellant gave immediate notice to the Rhode Island Supreme Court,

pursuant to Rule 32(b) of the R.I. Supreme Court Rules of Appellate Procedure, of the existence of the question of constitutionality of the State's levy and execution statutory scheme and he subsequently fully briefed that issue in his Appellant's Brief.

On January 7, 1986, the Rhode Island Supreme Court affirmed the judgment of the Rhode Island Superior Court, and denied and dismissed Briehler's appeal.

THE COURT'S OPINION

The meaning of the Rhode Island Courts' opinions is clearly that an individual's property may be arbitrarily confiscated with no due process of law whatsoever; that an individual's right of trial by jury is not guaranteed; that small corporations have no rights to pursue their ownership claims to property confiscated without due process

of law; and that the Rhode Island levy and execution statutes need only be arbitrarily and discriminately applied, obeyed, or enforced.

The unthinkable and intolerable effect of such an opinion is to render the Constitution of the United States virtually meaningless and without authority.

ARGUMENTS

I. THE COURT SHOULD SUMMARILY REVERSE THE DECISION BELOW

The precedents established by this Court not only do not support the decision of the Supreme Court of Rhode Island, but require its reversal. Fuentes v. Shevin, 407 U.S. 67; Armstrong v. Manzo, 380 U.S. 545, 552; Mullane v. Central Hanover Trust Co., 339 U.S. 314; Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459; Truax v. Corrigan, 257 U.S. 312.

Deprivation of due process of law is unconstitutional in all circumstances.

II. THE QUESTION IS SUBSTANTIAL

This case poses a constitutional question concerning the Rhode Island Levy and Execution Statutes which is so substantial as to require plenary consideration.

Justice Needham ruled, and the Rhode Island Supreme Court affirmed, that there is no Rhode Island statutory requirement that the Execution debtor must receive actual notice prior to the sale of his property and that there were no Constitutional violations surrounding the confiscation of the property belonging to the judgment debtors and the third parties with no due process of law.

The Fifth and Fourteenth Amendments to the Constitution of the United States guarantee that no individual shall be arbitrarily deprived of his property without due process of law,

i.e., without reasonable notice and without the opportunity to be heard and to present a defense, at a meaningful time and in a meaningful manner, before the deprivation of his property rights. Armstrong v. Manzo, 380 U.S. 545, 552 (1965); Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969); U.S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516; Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084; Fuentes v. Shevin, 407 U.S. 67 (1972).

Due process of law is based on fundamental and inherent principles of justice.

In Holden v. Hardy, 169 U.S. 390, 391, the Court held:

> "Recognizing the difficulty in defining, with exactness, the phrase 'due process of law', it is certain that these words imply a conformity with natural and inherent principles of justice and forbid that one man's property

> or right to property, shall be taken for the benefit of another . . .without compensation; and that no one shall be condemned in his person or property without an opportunity of being heard in his own defence."

According to the principles of due process of law, the notice of a proceeding must be reasonable, meaningful, appropriate, and in keeping with settled practice.

> ". . .the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce, or contest." Mullane v. Central Hanover Trust Co., 339 U.S. 314.

In Fuentes v. Shevin , 407 U.s. 67, U.S. Justice Stewart delivered the Opinion of the Court, stating:

> ". . .the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's
>
> right to enjoy what is his, free of governmental interference. See Lynch v. Household Finance Corp., 405 U.S. 538, 552. . .

> "It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . .And no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 170-171. . .
>
> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred."

As Rhode Island levy and execution statutes permit the arbitrary confiscation of property with no notice whatsoever to the property owner, the statutes violate the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION

It is both dangerous and bizarre for a Supreme Court of any State in the United States to hold that an individual's property may be confiscated with no due process of law.

It is equally dangerous for the Rhode Island Supreme Court to affirm that proven blatant violations of Rhode Island laws are not violations at all if committed by Rhode Island's local politicians and officers of the Rhode Island Courts.

Rhode Island's levy and execution statutes are clearly unconstitutional as the application thereof may readily result in sanctioned blatant violations of law by local politicians and officers of the Rhode Island courts and in the confiscation of property with no due process of law to the property owner.

Appellant respectfully requests

that the decision of the Rhode Island Supreme Court be reversed.

In any event, probable jurisdiction should be noted.

Respectfully submitted,

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Trenton, N.J. 08638

January 7, 1986

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPREME COURT
No. 84-188-A

Roy P. Briehler et. al. :

v. :

Poseidon Venture, Inc., et. al. :

OPINION

KELLEHER, J. This Superior Court civil action represents a challenge to a constable's sale of a ferryboat to the defendants, William Burgin (Burgin) and Jerry MacIntyre, who shortly after the sale sold the vessel to Poseidon Venture, Inc. The trial justice rejected the challenge and dismissed the suit. Although there are three named plaintiffs, the real party in interest is Roy P. Briehler (Briehler).

In 1971 Briehler purchased from the federal government as surplus property

a decommissioned ferryboat known as The Narrows for just over $11,000. He had the boat towed to the Town of Jamestown and later entered into a twenty-five-year lease with the town for what had been the Newport-Jamestown ferry slip. The rental was a dollar a year. Briehler renovated the vessel, transforming it into a summer-season dockside restaurant/motel. Seven years later Burgin formulated and submitted to the Jamestown Town Council a redevelopment project that called for the relocation of the ferryboat and the construction of a marina that could serve between thirty and fifty boats. Briehler was opposed to the project.

Time marched on, and in 1982 Briehler was sued in the Newport County Court by a fuel-oil dealer for oil delivered to the ferry and repair services performed on Briehler's auto-

mobile. Judgment was entered in the Second Division District Court against Briehler for $602.61 plus interest and costs. Briehler failed to take a timely appeal to the Superior Court. Thereafter, execution issued, and on February 26, 1983, the constable's sale that is now being challenged took place. There were two bids: one by the fuel-oil dealer, who offered the amount of the judgment, the other by the successful bidder, Burgin, who offered the amount due Briehler's creditor plus a penny.

Although Briehler has put forth a plethora of reasons why the constable's sale should be vacated, only two of his contentions merit any discussion. They are the inadequacy of the successful bid and the constable's failure at the time of the sale to "expose" the goods

to any potential purchaser.[1] Beauty is in the eye of the beholder, and obviously Briehler considered the ferry to be something akin to a floating palace, whereas Burgin stressed that by 1983 the boat, which had never left the dock after it first arrived at the ferry slip in 1971, had become a rotted shell housing a "greasy-spoon" type of restaurant concession and a few "abysmal" motel rooms.

Briehler was involved in other litigation in the Federal District Court for the District of Rhode Island for work performed by a shipyard on another

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1. In his announcement of sale, the constable stated that he was levying all right, title, and interest that defendant then had in and to the ferry-boat and "the goods, chattels, equipment and other personal property located thereon or therein."

boat he owned. That litigation was resolved when Briehler gave to the shipyard a security interest in the ferryboat for an unliquidated amount.

This court has consistently ruled that mere inadequacy of price, in and of itself, is not sufficient to set aside a sheriff's or constable's sale. Smith v. Adelman, 69 R.I. 211, 214, 32 A.2d 617, 618 (1943); Bowker v. Semple, 51 R.I. 142, 145, 152 A. 604, 605 (1930); Boiani v. Wilson, 47 R.I. 317, 322, 132 A. 881, 883 (1926); see also Annot., 5 A.L.R. 4th.786 (1981). Before the turn of the century, the court in Aldrich v. Wilcox, 10 R.I. 405, 409 (1873),[2]

2. Boiani v. Wilson, 47 R.I. 317, 322, 132 A. 881, 883 (1926), seems to say that gross disparity, in and of itself, is not grounds for invalidating a sale and cites Aldrich v. Wilcox, 10 R.I. 405 (1873), in support of that proposition. However, a close reading of Aldrich indicates that the court did rule that an inadequacy that would shock one's moral sense would, in and of itself, be grounds for (Footnote continued)

acknowledged that gross inadequacy of price such as would shock one's moral sense would be a ground for setting aside a sale like the one now under review.

Experts who testified in this case gave estimates of the value of the ferryboat that ranged anywhere from $15,000. to $1,100,000.00. The trial justice determined that the vessel had a value of $75,000.00 on the date of the sale. However, he was of the belief that the sale price of $931 was not outrageously or grossly inadequate because at the time of the sale there was an outstanding lien of an unliquidated amount that, in the trial justice's words, might have been "$10, * * * $100, or * * * several tens of thousands of dollars."

(Footnote continued)
vacating a sheriff's sale, and an inadequate price, coupled with irregularities, could be subject to reversal. See id. at 409.

Findings of fact made by a trial justice sitting without a jury will be accorded great weight and will not be overturned unless the trial justice either overlooked or misconceived material evidence or was otherwise clearly wrong. Harbor Marine Corp. v. Briehler, R.I. , 459 A.2d 489, 492 (1983). On this record we are not persuaded that the trial justice committed error when he refused to find that the price paid at the auction was grossly inadequate.

The constable, in conducting the sale, was bound by the terms of G.L. 1956 (1969) Reenactment) 9-26-12, which provide that the goods or chattels attached shall be kept in the presence of the officer, and their sale shall be advertised at least ten days before they shall be "exposed" and offered for sale, in order to give the person who owns such

goods or chattels the opportunity to pay the money due together with accrued costs and interest. It is undisputed that the constable did not expose the goods prior to the sale.

Inadequacy of price, then, when taken into consideration with other circumstances or irregularities surrounding the sale, might justify setting it aside. Here, Briehler argues that the inadequate price, when coupled with the failure to expose the goods, justifies an invalidation of the constable's sale. It is conceded that the ferryboat was not open for inspection so that people could board it and inspect its quarters. However, we believe that if Briehler is to prevail on the lack of exposure, it was incumbent upon him to show that this irregularity affected the price received by the constable.

Exposure of goods allows a prospective bidder to see and examine what is being offered for sale. Pictures of the interior of the vessel taken after the sale when Burgin and MacIntyre went aboard The Narrows were introduced into evidence. In dismissing Briehler's suit, the trial justice accepted defendants' description of the vessel's interior as "filthy," "dirty," "a mess," and in a "state of disrepair." A survey of the vessel made in March of 1983 indicated that housekeeping of the below-deck areas was poor with no effort being made to maintain watertight integrity.

The trial justice rejected testimony by a friend of Briehler's who served as a jack of all trades on the ferryboat, including that of a chambermaid. This witness sought to show that had the contents of the vessel been exposed, a

prospective buyer could have seen that there was much valuable material on board, resulting in a higher bid, since her inventory indicated the presence of such materials as dacron line, 500 gallons of asphalt, 40 Tiffany hanging lamps, and hundreds of pieces of china, including bowls, cups, and saucers. It is obvious that the trial justice was of the belief that exposure would add nothing to the sale, and we share such a belief. Consequently, we cannot fault the trial justice's dismissal of Briehler's suit.

Briehler's appeal is denied and dismissed, and the judgment appealed from is affirmed.

Chief Justice Bevilacqua did not participate.

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC.

ROY BRIEHLER, et als. Plaintiffs	)	
vs.	)	C.A.No.83-0964
POSEIDON VENTURE, INC., ET AL. Defendants	)	

DECREE

This matter is before the Court (Needham, J.) for decision on plaintiffs' second amended complaint, defendants' answers and counterclaims, and the proof. The Court has heretofore granted the motion of defendant Sylvia's, Inc. for a directed verdict; granted the remaining defendants' motions at the close of the evidence to dismiss the claims of plaintiff Briehler Properties, Inc. with prejudice based on that New Jersey corporation's failure to obtain a certificate of authority to do business in Rhode Island as

required by General Laws of 1956 (1969 Reenactment), Section 7-1.1-117; and denied defendants' said motions to dismiss as they relate to plaintiff Roy Briehler's of New Jersey, Inc. The Court has found that the latter corporation was not doing business in Rhode Island within the meaning of Section 7-1.1-117. Thus, the claims before the Court at this time are the claims of plaintiffs Roy Briehler and Roy Briehler's of New Jersey, Inc. against defendants William Burgin, Jerry L. McIntyre, and Poseidon Venture, Inc., and said defendants' counterclaims.

The Court has concluded, as a matter of law, that there is no issue to be submitted to the jury as a matter of right. The Court has reluctantly declined to exercise its discretion to have the jury continue to sit as an

advisory jury in equity.

The Court finds that the facts established by the weight of the credible evidence in this case are as follows: Roy Briehler, acting as agent for Roy Briehler's of New Jersey, Inc., a New Jersey corporation of which Roy Briehler is the principal stockholder, purchased a ferry boat known as "The Narrows", or "Narrows" from the United States government in or about early September, 1971. The purchase price was approximately $11,188.00. Thereafter, certain work was done on the boat to refurbish it for its intended use.

Roy Briehler's of New Jersey, Inc. did not hold title to the ferry boat for any substantial period of time. By December 31, 1971, the ferry boat was transferred to Roy Briehler, the individual who is also

the principal stockholder of Roy Briehler's of New JErsey, Briehler Properties, Inc., and Inn Island, Inc.

Shortly before the above transfer of title to Roy Briehler, a lease arrangement was entered into by and between Roy Briehler and the Town of Jamestown. The lease, which is Exhibit 40, is dated November 8, 1971. At that time, title to the boat was in the name of Roy Briehler's of New Jersey, Inc. Despite the fact that title was with that corporation, the lease refers to "lessee's" ferry boat. The lessee is Roy Briehler, and the lessor is the Town.

There is no question in the Court's mind that from 1972 to 1982, there was refurbishing and adding of rooms. For a substantial period of time, a restaurant and motel business was conducted aboard the ferry boat.

Matters relating to title to the ferry boat went undisturbed until some time after a suit was commenced involving a vessel known as the "Flying Cloud". At that time, Roy Briehler, in negotiating for the release of the "Flying Cloud", executed a security agreement, notice of which was filed with the Secretary of State, As filed and executed, Roy Briehler, the individual, gave that security interest to the lien holder. Within a fortnight after that, for reasons not specifically on the record but which are susceptible to an inference, Roy Briehler transferred title to the boat to Briehler Properties, Inc. Upon making that transfer, the business arrangements on the vessel involving the individual and the corporations were conducted on an informal basis.

On or about July 1, 1980, Briehler Properties, Inc. began to do business

in Rhode Island. It executed a dockage agreement with Roy Briehler under which it was in effect the lessee of dockage space. Roy Briehler's lease with the Town obliges the lessee not to sublet without the lessor's prior consent. The arrangement entered into between Briehler Properties, Inc. and Roy Briehler is in a technical sense a sub-letting of a portion of the leased premises. Briehler Properties, Inc. also entered into a contract with Inn Island, Inc., the Rhode Island corporation responsible for doing business aboard the vessel. This assured Briehler Properties, Inc. a percentage of the gate.

I find however, that the true owner, the real owner, of the vessel and the business being conducted aboard was Roy Briehler, and that he used Briehler Properties, Inc., Roy Briehler's of New JErsey, Inc., and Inn Island, Inc.

as conduits through which he carried out the activities being conducted with and upon the ferry boat "Narrows".

I further find as a fact that in or about the period of time between 1972 and February 26, 1983, in the general community of Jamestown, and by the sworn testimony of Roy Briehler when under oath in Newport District Court, Mr. Briehler was understood to be the owner of the ferry boat. This belief was generally held by those in the community with whom he did business. On more than one occasion, he held out that he was the owner of the boat. On some of those occasions, title was in his name.

I further find that although there is some correspondence eminating from the Town of Jamestown in response to a proposition made by Roy Briehler's of New Jersey, Inc., generally the

existence of the devices through which Roy Briehler operated his business was unknown here in Rhode Island. I note that the Rhode Island corporation, Inn Island, Inc., is not a party to this action. By his conduct, Roy Briehler is estopped from asserting a technical defense or position that as of the time of the sale, title to the boat and its contents had been placed by him in the name of one or more corporations.

The complaint seeks to set aside the constable's sale on February 26, 1983. There are two methods available to a person offended by a judgment against him. The first is a direct appeal. If one is not filed or if it cannot be timely filed, for "cause" shown, a Superior Court Justice may review the proceeding upon which the judgment was rendered.

Here, the Court is being asked to

review the constable's conduct in selling at public auction all the right, title, and interest in and to the property of Roy Briehler, which is the ferry boat and its contents. Likewise at that sale, there was a second auction concerning Inn Island, Inc. selling its interest in the ferry boat and those matters pertaining to it.

The Court will note here that in coming to the conclusion that Roy Briehler used the corporate entities to funnel his activities through, that the inventory submitted as Exhibit 67 shows items belonging to Roy Briehler's of New JErsey, Inc., which were actually used by Inn Island, Inc. Although there is conflicting evidence about the presence or non-presence of much of the inventory on Pages 1 through 13 of that Exhibit, and although the dollar and cent amounts of those items are not

in evidence, a substantial amount of the property alleged to be on board "the Narrows" is covered by those 13 pages of inventory. Although the items cover a significant portion of the restaurant facility, Inn Island, Inc., the party using the items, entered into no separate and distinct agreement with Roy Briehler's of New JErsey, Inc. concerning that use at the time Roy Briehler conveyed title to Briehler Properties, Inc., and Briehler Properties, Inc. entered into its own arrangement with Inn Island, Inc. That observation is significant to the Court in considering Roy Briehler to be the true owner of that which was aboard the ferry boat.

The Court does have jurisdiction here to consider the constable's sale. I have taken great pains to review the District Court and Superior Court records. I find that the District

Court execution was properly ordered. The statute provides that a levy may be made against a person or his property.

On the face of his District Court appearance, Roy Briehler is a non-resident, although he was served in Rhode Island. When he entered his appearance, he notified the Court that he was a nonresident of Rhode Island. Judgment was entered against him and he was present when Judge Pederzani entered the judgment. I also find on the credible evidence that on the day of the judgment, Attorney Fox notified Mr. Briehler of the then amount to be paid in full satisfaction of the judgment. Mr. Briehler never paid the judgment. Mr. Briehler thereafter voluntarily absented himself from the State of Rhode Island. He came back to Rhode Island a couple of times between then and February 26, 1983. He

was informed by Attorney Fox with appropriate notice that Fox would press to have his District Court appeal dismissed. The Justice who entered the dismissal on December 6 had jurisdiction to do so. No appeal was filed.

I find that on December 10, 1982, a copy of the remand Order was mailed to both the ferry boat and New Jersey addresses. I find as a fact that up to March 3, 1983, mail sent to the ferry boat addressed to Roy Briehler was being forwarded not to Miami, but to Mr. Briehler's residence in New Jersey.

Where a debtor has absented himself from the State, a judgment creditor has the right upon adequate publication to levy upon the goods and chattels of the judgment debtor. Attorney Fox did so in behalf of defendant Sylvia's, Inc. I find no irregularities or violations of the law governing satisfaction of

executions to have taken place. Notice was given at least 10 days before the sale. The number of people who were present at the sale constituted a sufficient number to justify the constable in conducting the sale. I find that defendant William Burgin was a purchaser at that auction; that he purchased in good faith; and that the documents required to evidence that sale were made, signed, and delivered to Burgin.

It may well be that because of the history surrounding "The Narrows" in the small Town of Jamestown, there was some trepidation, holding back, or reluctance on the part of the persons assembled. I find defendant McIntyre's testimony to be credible that he did not believe that Mr. Briehler would "let it go" this way.

Counsel for Mr. Briehler raises the objection that the sale of Mr.

Briehler's property could not take place without notice to him in sufficient time for him to have appeared to do that, and perhaps he should have done it earlier. But it seems to the Court that the plaintiff seeks to put the blame on everybody but himself for the predicament he finds himself in. He left the State and he was unavailable to protect his property, having left that property where he left it. There was no requirement that Attorney Fox actually notify the judgment debtor. His failure to mail the notice sooner is not a ground to set aside the sale.

The second point urged by the plaintiff to set aside the sale is that there was disproportionate value between the price realized at the auction and the value of that which was on board, and the value of the ferry boat. In that regard, there was expert testimony from one who was well qualified in the

field of engines. He has bought and sold some ferry boats, and he had been approached by Mr. Briehler to sell "The Narrows". I believe Mr. Briehler would have been willing to sell his boat for $1.5 million. I have no doubt about that. I frankly do not accept the opinion of the expert as to value. I have viewed the photographs taken on board as to how the interior looked when the defendants first boarded the boat. I believe that their version of what the boat looked like is credible: filty; diry; a mess; a state of disrepair. There are photographs in evidence from which one could say that there was garbage on board. I find the evidence presented by the plaintiff and his expert to be of little assistance and I give it no weight as it relates to the value of "the Narrows" on February 26, 1983.

The Court does give weight to Exhibit 62, the vessel survey. Everybody who testified agreed as to the qualifications of its author, Mr. Miner of Hull & Cargo Surveyors, Inc. The mission described therein was a condition and value survey. I have read that survey, and portions of it bear out that the condition of the boat was bad. The value section of the survey estimates the physical value at $60,000 subject to a few qualifications. Subject to other qualifications, improvements and repairs, the physical value is estimated at $120,000. The survey estimates that the value of the boat as scrap is $15,000. I have considered the testimony as it relates to "the Narrows" and its equipment and furnishings. A fair value at the time of the sale was approximately $75,000.

I do not put any weight on the inventory as prepared by Miss Worthington.

The direct testimony by those people who were actually on board shows that much of what she says was on board was not, in fact, on board. I place little value on her list of inventory. I do not think that all of the inventory listed could have been taken off the boat, but there is evidence that access to the ferry boat was gained through an open window on the restaurant deck. Although there was no direct evidence of vandalism, some inference can be drawn that during the winter months, some adventuresome people entered the ferry boat. I believe that the window was open and that defendants Burgin and McIntyre gained entrance as they said.

The claim is that the $1,000 approximate purchase price is so disproportionate that the sale should be set aside because it shocks the conscience. Although the tenor of

that argument is appealing, it negates an important factor. There is an open ended lien on this ferry boat in the form of the security interest evidenced by defendants' Exhibit A. The purchasers at this auction, while they did not check for encumbrances, are charged with notice concerning this encumbrance. They are charged with notice because the procedure for giving the world notice of the security interest is an unliquidated sum. It may be $10.00, $100,00, $10,000, or $100,000. There is no evidence before the Court as to the amount of the lien. Under the totality of these circumstances, the disparity between price and value disappears, particularly when one reads the survey and realizes that additional investment will be required to realize additional value, and that the soundness of the hull is uncertain. The boat has been lying in 9-20 feet

of water for some 12 years. In addition, she may well be scrapped by the purchaser, and whatever she brings for scrap may have to be applied in satisfaction of the lien. I reject the argument that the price was inadequate. It does not so shock my conscience that I will interfere with the constable's sale. It is only in the most unusual circumstances that equity should interfere with constables' sales.

I further find and declare as part of the relief in this case that "the Narrows" and all the property affixed to or used to support it or the activities conducted on it including the intangible business interests held and/or granted by the plaintiff, or any of them, relating to the vessel and its contents, were acquired by defendant Burgin, the successful bidder at the constable's sale on February 26, 1983.

For the reasons stated, I will deny and dismiss with prejudice the complaint of Roy Briehler's of New Jersey, Inc. and of Roy Briehler individually, and grant the counterclaims of the defendants to the extent consistent herewith.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiffs shall take nothing. The action is dismissed on the merits, and defendants shall recover of the plaintiff their costs of action;

2. The Court declares that defendant William Burgin, the successful bidder at a constable's sale held on February 26, 1983, acquired title to the ferry boat "The Narrows: (a/k/a "Narrows") and all of the property affixed thereto or used to support it or the business activities conducted upon it, including the intangible business interests held and/or granted by the plaintiffs, or any

of them.

3. The restraining order entered on or about March 14, 1983, is hereby dissolved.

Dated at PRovidence, Rhode Island this 16th day of April, 1984.

By Order:

/s/
Dep. Clerk

Enter:

/s/ Needham, J.
19 April 84
3:15 P.M.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPREME COURT
No. 84-188A

ROY P. BRIEHLER,
Plaintiff-Appellant

vs.

POSEIDON VENTURE, INC., WILLIAM BURGIN, SYLVIA'S, INC., and JERRY L. McINTYRE,
Defendants-Appellees /

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 2 U.S.C. 1257(2), Roy P. Briehler, plaintiff-appellant above-named, hereby appeals to the Supreme Court of the United States from the Opinion of the Rhode Island Supreme Court, dated January 7, 1986, denying an dismissing the above-captioned appeal and affirming the Decree of the Rhode Island Superior Court, Providence County, dated April 19, 1984, in C.A. No. 83-0964. Plaintiff-appellant is drawing into question the validity of the Rhode Island Statutes pertaining to Levy and Execution Sale procedures,

Nos. 9-26-9; 9-26-12; and 9-26-13, on the grounds that they are repugnant to the Constitution of the United States.

This Notice of Appeal shall be served upon the Rhode Island Attorney General as 28 U.S.C. 2403(b) may be applicable.

/s/

ROY P. BRIEHLER, Appellan
Pro Se
1740 N. Olden Ave.
Trenton, New Jersey
08638

Dated: Jan. 13, 1986